

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.3:08-cr-175
	)	JUDGES PHILLIPS/SHIRLEY
CLARK ALAN ROBERTS, and	)	
SEAN EDWARD HOWLEY,	)	
	)	
Defendants.	)	

**MOTION TO EXCLUDE STATEMENTS OF CO-DEFENDANT AND ANY  
TESTIMONIAL STATEMENTS OF NON-TESTIFYING INDIVIDUALS FROM ANY  
JOINT TRIAL, OR, IN THE ALTERNATIVE, FOR SEVERANCE**

Comes the defendant, Clark Alan Roberts, pursuant to Fed. R. Crim. Proc. 14(a), Bruton v. U.S., 391 U.S. 123 (1968), Crawford v. Washington, 541 U.S. 36 (2004), and their progeny, and by and through counsel, and respectfully moves this Honorable Court for an Order excluding the testimonial statements of co-defendant Sean Edward Howley, or, in the alternative, severance. Additionally, defendant Roberts moves the Court for an Order excluding any testimonial hearsay statements by any non-testifying person at trial.

In further support thereof, defendant states the following:

(1) It is Mr. Roberts' understanding that co-defendant Sean Edward Howley was interviewed by agents of the Federal Bureau of Investigation during their search in September of 2007 of Wyco Tire Technology in Greenback, Tennessee.

(2) It is further Mr. Roberts' understanding that Mr. Howley was specifically questioned by agents about Mr. Roberts and that Mr. Howley allegedly made statements concerning Mr. Roberts to government agents during that interview.

(3) The Confrontation Clause of the Sixth Amendment mandates either exclusion of

Mr. Howley's alleged statements to government agents from any joint trial or severance of the defendants.

(4) Accordingly, defendant Roberts has moved the Court for exclusion at trial of co-defendant Howley's statements under Bruton, or, in the alternative, the granting of a severance to Mr. Roberts, and exclusion of any *testimonial* hearsay statements by any non-testifying person under Crawford.

(5) Defendant further relies upon, and incorporates herein, the supporting memorandum filed with this motion.

Respectfully submitted this 15th day of May, 2009.

s/ W. Thomas Dillard  
**W. THOMAS DILLARD**  
[BPR # 002020]

s/ Stephen Ross Johnson  
**STEPHEN ROSS JOHNSON**  
[BPR# 022140]

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*Counsel for Clark Alan Roberts*

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ Stephen Ross Johnson